IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7720 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHILDAS AMULMAM BHAVNANI

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR SB BRAHMBHATT for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE C.K.BUCH

Date of decision: 28/02/2000

ORAL JUDGEMENT

#. Rule. Service of rule is waived by learned counsel Mr.M.R.Bhatt for the respondent. Upon joint request and considering the nature of controversy involved, the matter is taken up for final hearing today itself.

#. The only short question which requires to be determined and adjudicated upon in this petition under Article 226 of the Constitution of India is as to whether the impugned order dtd.22.7.1999 and resultant rejection of the benefit of Kar Vivad Samadhan Scheme 1998 (KVSS) to the petitioner and refusing to issue necessary certificate under KVSS is vulnerable.

#. In view of the KVSS which was introduced by Finance (No.2) Act, 1998 in Chapter IV of Finance Act, the petitioner assessee made a declaration as required under Sec.88 on 7.9.1998 which came to accepted by the respondent authority on 12.1.1999 under Sec.90 (1). Petitioner therefore came to be directed to make payment within a period of 30 days under Sec. 90(2) of the Scheme. The amount which petitioner came to be directed in Form No.2 (A) under Rule IV (a) KVSS Rule 1998 came to Rs.2,45,042/- and that order came to be served on assessee on 23.1.1999. Thereafter, assessee went on depositing the amount as per the direction on different dates.

#. The assessee requested for KVSS certificate. However, request came to be rejected on the ground that there was delay of 1 day.

#. The revenue intimated to the assessee that order under Sec.90(1) 12.1.1999 was issued determining sum payable at Rs.2,45,042/- and as per the provision of Sec.90 Sub Sec.2 of Finance (No.2) Act 1998, assessee was required to pay the sum determined under Sec.90 (1) within 30 days from the date of the order. As per the order, assessee paid Rs.2,45,042/- on 12.2.1999 which was beyond 30 days according to the revenue and therefore the payment was beyond the time limit prescribed in KVSS 1998. It was, therefore, informed to the assessee by the revenue that payment cannot be treated as payment under the Scheme. This order came to be recorded by the Commissioner of Income-tax respondent no.1 on 22.7.1999 which is precisely challenged before us in this petition.

#. After having heard the learned advocates appearing for the petitioner and respondents and considering the factual scenario from the record of the present case, we have no hesitation in finding that the impugned order of the respondent no.1 is patently unsustainable as per the order issued by ITO under the KVSS Scheme. As per the order of the revenue and resultant payment made, could not be said to be, beyond the period of limitation of 30 days. The benefit arising out of the KVSS Scheme therefore came to be rejected and this approach, with due respect, does not appear to be in consonance with the factual situation and proposition of law. In the light of the facts and circumstances of the case, in our opinion, the payment made as directed by the revenue by the assessee was within a period of limitation and as there was no delay, the impugned order is required to be quashed and set aside and obviously therefore, the assessee petitioner would be entitled to the benefit upon getting the certificate under KVSS Scheme. In the result, the impugned order refusing the benefit is quashed and set aside and respondent no.1 is directed to issue necessary certificate under KVSS 1998 to the petitioner assessee so as to afford him an opportunity of availing benefit of KVSS 1998. Obviously therefore, the petition is required to be allowed and accordingly it is allowed. Rule made absolute. No order as to costs.

kks